

1 THE ARNS LAW FIRM
2 ROBERT S. ARNS (65071)
(rsa@arnslaw.com)
3 JONATHAN E. DAVIS (191346)
(jed@arnslaw.com)
4 STEVEN R. WEINMANN (190956)
(srw@arnslaw.com)
5 515 Folsom Street, 3rd Floor
6 San Francisco, CA 94105
7 Tel: (415) 495-7800
Fax: (415) 495-7888

8 JONATHAN JAFFE LAW
9 JONATHAN M. JAFFE (267012)
(jmj@jaffe-law.com)
10 3055 Hillegass Avenue
11 Berkeley, CA 94705
12 Tel: (510) 725-4293
13 Fax: (510) 868-3393

Attorneys for Plaintiffs

COOLEY LLP
MICHAEL G. RHODES (116127)
(mrhodes@cooley.com)
MATTHEW D. BROWN (196972)
(brownmd@cooley.com)
JEFFREY M. GUTKIN (216083)
(jgutkin@cooley.com)
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222

Attorneys for Defendant Facebook, Inc.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

18 ANGEL FRALEY; PAUL WANG; SUSAN
19 MAINZER; JAMES H. DUVAL, a minor, by
and through JAMES DUVAL, as Guardian ad
20 Litem; and W.T., a minor, by and through
RUSSELL TAIT, as Guardian ad Litem;
21 individually and on behalf of all others
similarly situated,

22 Plaintiffs,

23 v.

24 FACEBOOK, INC., a corporation; and DOES
1-100,

25 Defendants.
26

Case No. CV 11-01726 RS

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF REVISED SETTLEMENT**

DATE: October 25, 2012
TIME: 1:30 p.m.
JUDGE: Hon. Richard Seeborg
COURTROOM: 3

1 **NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL OF REVISED**
2 **SETTLEMENT AGREEMENT**

3 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on October 25, 2012 at 1:30 p.m. or as soon thereafter as
5 this Motion may be heard in the above-entitled court, located at 450 Golden Gate Avenue, San
6 Francisco, CA 94102, in Courtroom 3, 17th Floor, plaintiffs Susan Mainzer, James H. Duval, and
7 W.T., by and through Russell Tait, as Guardian ad Litem (“Plaintiffs”) and defendant Facebook,
8 Inc. (“Facebook”) (collectively with Plaintiffs, “Parties”) will jointly move for preliminary
9 approval of the Parties’ Revised Settlement Agreement and Release (“Revised Settlement”).

10 The Parties have substantially revised the settlement to address the issues raised by the
11 Court and third parties. First, the Revised Settlement now provides for a \$20 million settlement
12 fund, from which Class Members—Facebook users who have appeared in Sponsored Stories—
13 may make claims to receive a cash payment of up to \$10.00. Second, the Parties have deleted the
14 “clear sailing” provision, and Facebook may now oppose Plaintiffs’ counsel’s petition for fees
15 and expenses. Third, the Parties have provided a greater level of detail regarding how the
16 injunctive relief will be implemented as to all Class Members, and also have augmented the relief
17 related to minor users (the Minor Subclass). Finally, regardless of the number of claims made or
18 the amount of the attorneys’ fees the Court approves, none of the \$20 million will return to
19 Facebook. After payment of all claims, fees, and administrative expenses, any remaining portion
20 of the \$20 million will be awarded as *cy pres* to organizations proposed by the Parties and
21 approved by the Court.

22 Accordingly, the Parties respectfully submit that the Revised Settlement substantially
23 enhances the relief being provided to the Class, and easily meets the standard for preliminary
24 approval. For these reasons, and the reasons set forth in each of the Parties’ concurrently filed
25 Memoranda of Points and Authorities, the Parties jointly request that the Court preliminarily
26 approve the Settlement.¹

27 ¹ In a separate motion, Plaintiffs move the Court for provisional certification of a class and
28 appointment of class representatives and counsel.

1 This Motion is based on this Notice of Motion and Motion; Defendant Facebook’s
 2 Memorandum of Points & Authorities in Support of Joint Motion for Preliminary Approval of
 3 Revised Settlement and the accompanying Declarations of Christopher Plambeck, James C.
 4 Squires, Michael G. Rhodes, and Matthew D. Brown, including any exhibits thereto; Plaintiffs’
 5 Memorandum of Law in Support of Motion for Class Certification, Appointment of Class
 6 Counsel and Appointment of Class Representatives Pursuant to Motion for Preliminary Approval,
 7 and the accompanying Declarations of Robert Arns, Jonathan E. Davis, Phillip Allman, and
 8 Fernando Torres, including all exhibits thereto; all pleadings and papers on file in this matter, and
 9 such other matters as may be presented to the Court at the time of the hearing or otherwise.

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Dated: October 5, 2012

THE ARNS LAW FIRM

/s/ Robert S. Arns
 Robert S. Arns (65071)

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 ROBERT S. ARNS (65071)
 (rsa@arnslaw.com)
 JONATHAN E. DAVIS (191346)
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 (jmj@jaffe-law.com)
 3055 Hillegass Avenue
 Berkeley, CA 94705
 Tel: (510) 725-4293
 Fax: (510) 868-3393

Attorneys for Plaintiffs

1 Dated: October 5, 2012

COOLEY LLP

2 /s/ Michael G. Rhodes
3 Michael G. Rhodes (116127)

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5 MICHAEL G. RHODES (116127)
6 mrhodes@cooley.com
7 MATTHEW D. BROWN (196972)
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Attorneys for Defendant Facebook, Inc.

12 **ATTESTATION**
13 **(CIVIL LOCAL RULE 5-1(i)(3))**

14 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
15 document has been obtained from each of the other signatories.

16 Dated: October 5, 2012

17 /s/ Michael G. Rhodes
18 Michael G. Rhodes

19 1286422/SF